



TEXAS DEPARTMENT OF INSURANCE

Division of Workers' Compensation - Medical Fee Dispute Resolution (MS-48)

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MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

GENERAL INFORMATION

Requestor Name

Memorial Compounding Pharmacy

Respondent Name

Zurich American Insurance Company

MFDR Tracking Number

M4-17-1681-01

Carrier's Austin Representative

Box Number 19

MFDR Date Received

February 3, 2017

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary: "... we have not received any correspondence from the insurance carrier Zurich."

Amount in Dispute: \$138.79

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary: "The Requestor is not entitled to medical fee dispute resolution at this time, as there is an extent of injury/relatedness dispute relevant to the prescriptions provided."

Response Submitted by: Flahive, Ogden & Latson

SUMMARY OF FINDINGS

Dates of Service	Disputed Services	Amount In Dispute	Amount Due
August 30, 2016	Tizanidine	\$72.15	\$22.32
August 30, 2016	Ibuprofen	\$66.64	\$15.43

FINDINGS AND DECISION

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and applicable rules of the Texas Department of Insurance, Division of Workers' Compensation.

Background

1. 28 Texas Administrative Code §133.307 sets out the procedures for resolving medical fee disputes.
2. 28 Texas Administrative Code §133.2 defines terms used in the medical billing and processing chapter.
3. 28 Texas Administrative Code §133.240 sets out the procedure for medical bill processing by the workers' compensation insurance carrier.
4. 28 Texas Administrative Code §134.503 sets out the fee guideline for pharmacy services.
5. Texas Labor Code §408.027 sets out provisions related to payment of health care providers.
6. The submitted documentation does not include explanations of benefits presented to the requestor prior to

medical fee dispute resolution.

Issues

1. What are the services in dispute?
2. Did Zurich American Insurance Company (Zurich) reduce or deny the disputed services not later than the 45th day after receiving the medical bill?
3. Is Memorial Compounding Pharmacy entitled to reimbursement for the disputed services?

Findings

1. Memorial Compounding Pharmacy (Memorial) is seeking reimbursement of \$138.79 for the following drugs dispensed on August 30, 2016:

- Tizanidine HCl 4 mg, NDC 60505025202, 10 tablets
- Ibuprofen 800 mg, NDC 55111068405, 30 tablets

These are the services considered in this dispute.

2. Memorial contends in its position statement that it has “not received any correspondence from the insurance carrier Zurich.” According to Texas Labor Code Sec. 408.027(b), Zurich was required to pay, reduce, or deny the disputed services not later than the 45th day after it received the pharmacy bill from Memorial. Corresponding 28 Texas Administrative Code §133.240(a) also required Zurich to take **final action** by issuing an explanation of benefits not later than the statutorily-required 45th day. 28 Texas Administrative Code §133.2(6) defines final action as follows:

(6) Final action on a medical bill—

- (A) sending a payment that makes the total reimbursement for that bill a fair and reasonable reimbursement in accordance with §134.1 of this title (relating to Medical Reimbursement); and/or
- (B) denying a charge on the medical bill.

Memorial submitted a copy of a USPS Certified Mail receipt indicating that Zurich received the pharmaceutical bill for the services in dispute on September 15, 2016. Zurich was, therefore, not relieved of its requirement to pay, reduce, or deny the disputed services not later than the 45th day after it received the pharmacy bill from Memorial, in accordance with Texas Labor Code Sec. 408.027(b). When the insurance carrier receives a medical bill, it is obligated to take the following actions pursuant to 28 Texas Administrative Code §133.240:

- (a) An insurance carrier **shall take final action** [emphasis added] after conducting bill review on a complete medical bill...**not later than the 45th day** [emphasis added] after the insurance carrier received a complete medical bill...
- (e) The insurance carrier **shall send the explanation of benefits** [emphasis added] in accordance with the elements required by §133.500 and §133.501 of this title...The explanation of benefits shall be sent to:
 - (1) the health care provider when the insurance carrier makes payment or denies payment on a medical bill...

All workers compensation insurance carriers are expected to fulfill their duty to take final action as required by the division’s statutes and adopted administrative rules. The division finds that:

- no evidence was presented to the division to support that Zurich took final action by paying, reducing, or denying the services in dispute within 45 days; and
- no evidence was presented to the division to support that Zurich timely presented **any** defenses to Memorial on an explanation of benefits as required under 28 Texas Administrative Code §133.240 prior to the request for medical fee dispute resolution.

Flahive, Ogden & Latson argued in its position statement on behalf of Zurich, “The Requestor is not entitled to medical fee dispute resolution at this time, as there is an extent of injury/relatedness dispute relevant to

the prescriptions provided.” Zurich’s failure to timely issue an explanation of benefits to Memorial creates a waiver of defenses that Flahive, Ogden & Latson raised in its response to medical fee dispute resolution under 28 Texas Administrative Code §133.307(d)(2)(F):

The [carrier’s] response shall address only those denial reasons presented to the requestor prior to the date the request for MFDR was filed with the division and the other party. Any new denial reasons or defenses raised shall not be considered in the review...

Absent any evidence that Zurich raised defenses that conform with the requirements of Title 28, Part 2, Chapter 133, Subchapter C, the division concludes that the defenses presented in Zurich’s position statement, as submitted by Flahive, Ogden & Latson shall not be considered for review because those assertions constitute new defenses pursuant to 28 Texas Administrative Code §133.307(d)(2)(F).

3. 28 Texas Administrative Code §134.503 applies to the compound in dispute and states, in pertinent part:
 - (c) The insurance carrier shall reimburse the health care provider or pharmacy processing agent for prescription drugs the lesser of:
 - (1) the fee established by the following formulas based on the average wholesale price (AWP) as reported by a nationally recognized pharmaceutical price guide or other publication of pharmaceutical pricing data in effect on the day the prescription drug is dispensed:
 - (A) Generic drugs: $((\text{AWP per unit}) \times (\text{number of units}) \times 1.25) + \4.00 dispensing fee per prescription = reimbursement amount;
 - (B) Brand name drugs: $((\text{AWP per unit}) \times (\text{number of units}) \times 1.09) + \4.00 dispensing fee per prescription = reimbursement amount;
 - (C) When compounding, a single compounding fee of \$15 per prescription shall be added to the calculated total for either paragraph (1)(A) or (B) of this subsection; or
 - (2) notwithstanding §133.20(e)(1) of this title (relating to Medical Bill Submission by Health Care Provider), the amount billed to the insurance carrier by the:
 - (A) health care provider; or
 - (B) pharmacy processing agent only if the health care provider has not previously billed the insurance carrier for the prescription drug and the pharmacy processing agent is billing on behalf of the health care provider.

Reimbursement for the drugs in question is calculated below:

Ingredient	NDC & Type	Price/ Unit	Total Units	AWP Formula §134.503(c)(1)	Billed Amt §134.503 (c)(2)	Lesser of (c)(1) and (c)(2)
Tizanidine HCl	60505025202 Generic	\$1.46524	10	$(1.46524 \times 10 \times 1.25) + \$4.00 = \$22.32$	\$72.15	\$22.32
Ibuprofen	55111068405 Generic	\$0.30476	30	$(0.30476 \times 30 \times 1.25) + \$4.00 = \$15.43$	\$66.64	\$15.43
Total						\$37.75

The total reimbursement amount is \$37.75. This amount is recommended.

Conclusion

For the reasons stated above, the Division finds that the requestor has established that additional reimbursement is due. As a result, the amount ordered is \$37.75.

ORDER

Based on the submitted information, pursuant to Texas Labor Code Sec. 413.031 and 413.019 (if applicable), the Division has determined that the requestor is entitled to additional reimbursement for the services in dispute. The Division hereby ORDERS the respondent to remit to the requestor the amount of \$37.75, plus applicable accrued interest per 28 Texas Administrative Code §134.130, due within 30 days of receipt of this Order.

Authorized Signature

_____ Signature	Laurie Garnes _____ Medical Fee Dispute Resolution Officer	May 2, 2017 _____ Date
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YOUR RIGHT TO APPEAL

Either party to this medical fee dispute has a right to seek review of this decision in accordance with 28 Texas Administrative Code §133.307, 37 *Texas Register* 3833, applicable to disputes filed on or after June 1, 2012.

A party seeking review must submit a **Request to Schedule a Benefit Review Conference to Appeal a Medical Fee Dispute Decision** (form **DWC045M**) in accordance with the instructions on the form. The request must be received by the Division within **twenty** days of your receipt of this decision. The request may be faxed, mailed or personally delivered to the Division using the contact information listed on the form or to the field office handling the claim.

The party seeking review of the MFDR decision shall deliver a copy of the request to all other parties involved in the dispute at the same time the request is filed with the Division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision*** together with any other required information specified in 28 Texas Administrative Code §141.1(d).

Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.